

Domestic Relations Committee  
Judicial Conference of Indiana

**Minutes**  
January 19, 2001

The Domestic Relations Committee of the Judicial Conference of Indiana met in Indianapolis, Indiana on Friday, January 19, 2001 from 10:30 a.m.-2:45 p.m. at the Indiana Judicial Center in Indianapolis.

1. Members present. Lorenzo Arredondo, Robert R. Aylsworth, E. Michael Hoff, Kathy R. Smith, Richard G. Striegel, William C. Whitman and Daniel F. Donahue, Chair.
2. Staff present. Jeffrey Bercovitz provided the committee with staff assistance.
3. Guests present. Andrew Cosby and Bob Monday, President, PACE; Joseph B. Mamlin, Deputy Director, Division of Family and Children, Child Support Bureau, Michael Aronson, Attorney, Child Support Bureau; and John and Judy Stone were also present.
4. Minutes approved. The minutes for the meeting of the committee on December 7, 2000 were approved.
5. Parenting time guideline rule.
  - a. Judge Donahue reported the Supreme Court of Indiana adopted the Parenting Time Guidelines as a rule effective March 31, 2001. He thanked committee members for their hard work and the Child Support Bureau for funding their development.
  - b. Mr. Bercovitz distributed the web site address for the new rule ([www.state.in.us/judiciary](http://www.state.in.us/judiciary)) and the additional language added by the Supreme Court about the new rule's effect on existing parenting time orders.
6. Presentation by Joseph Mamlin.
  - a. Paternity affidavits. Joseph Mamlin, Deputy Director, Child Support Bureau, distributed draft legislation concerning the use of paternity affidavits under Indiana law. He explained that he has reports of courts not recognizing paternity affidavits and unsure about the law generally which jeopardizes \$30 million dollars received by Indiana. The proposed legislation will answer concerns raised in this area. The committee members discussed the costs of processing paternity cases generally. Mr. Mamlin agreed to draft a memorandum for distribution by the committee that outlines the risk of loss of federal funds, concerns that courts are not aware of the law, and the possibility of funding 67% of additional resources for courts to process Title IV-D support cases.
  - b. Income withholding. Mr. Mamlin reported the federal government requires the use of a uniform form for withholding income for child support and distributed a copy of this form to members of the committee. He explained that federal law requires income withholding orders be entered in every case and all income withholding orders to be paid at one location. Indiana law indicates that obligors may pay at one location. A letter was distributed recently to

all employers notifying them of the one location requirement under federal law, although Indiana has received an exemption for the one location.

Mr. Aronson explained the required form used “notice” and it was changed to “notice/order” to accommodate Indiana law. Mr. Mamlin requested input on the development of this and other forms for use in paternity cases. Judge Donahue said there is a possibility of placing additional forms with the child support guidelines. Mr. Mamlin agreed to draft a memorandum for distribution by the committee concerning the use of the “Order/Notice to Withhold Income For Child Support” form as a standard one in Indiana.

c. Foster care reimbursement orders. Mr. Aronson reported that foster care reimbursement orders for IV- E and non IV-E cases are often placed incorrectly in the ISETS computer as if they were child support orders. Mr. Bercovitz recommended and the committee agreed to refer this issue to the Juvenile Justice Improvement Committee for their disposition.

7. Mediation in family law cases.

a. Judge Donahue discussed the use of family law mediators on district basis at little or no cost to the litigants. Mr. Bercovitz distributed a proposal by Judge Chezem to develop a Virtual Center to support Parenting Time Guidelines in Indiana. The committee members made the following suggestions:

- (1) Review the Family Court Pilot Project developments in this area;
- (2) Review the Lake County law firms paying for training in March with a promise to mediate 3 cases after on a pro bono basis;
- (3) Review Judge Vanderpool’s article in the most recent issue of Res Gestae for a discussion of the court system in Indiana;
- (4) Invite Irene Spindler to the committee to explain the use of transformational mediation to the committee;
- (5) Train as many attorneys as possible in family law mediation in return for their commitment to conduct x number of mediations on a pro bono basis;
- (6) Devise a program to make mediation in family law cases available to all judges in Indiana without cost;
- (7) Invite the Diane Elliott, Access Mediation, Marion County IV-D court, to explain her “access and visitation” program in connection with support cases to the committee;
- (8) Review the use of “Fathers and Families” and access and visitation monies at FSSA to support this project;
- (9) Explore potential sources of funding of a permanent nature for this project;
- (10) Train and use senior judges to mediate family law cases in exchange for at least 30 mediation cases each year while continuing to receive health benefits;
- (11) Train judges as family law mediators during a special conference for this purpose only in order for them to know about mediation when they order it;
- (12) Hire mediators by the judicial branch at the state level with an office at the Division of State Court Administration or Judicial Center; and the
- (13) Use of “facilitators” to assist pro se litigants in all aspects of litigation.

b. The committee members agreed to invite representatives from various family law mediation programs to the next meeting of the committee to discuss the following: statistics on the percentage of dissolutions filed that go to mediation, the success rate of mediation and how long before the litigants return to court, how many return to court, the mechanism used to handle

mediation, forms used, how many mediators are and are not attorneys, and anything else about their program that they wish to discuss.

8. Child support.

a. Mr. Bercovitz distributed materials from Judy Stone concerning the treatment of income from Sub-S corporations in the child support guidelines. Judge Donahue discussed Ms. Stone's question concerning the inclusion of retained earnings as gross income of minority shareholders of a Sub-S corporation. The committee members asked Mr. Bercovitz to draft a letter to the Family Law Section of the Indiana State Bar Association requesting their thoughts on treatment of income from small businesses generally in the support guidelines, and the treatment of income in Sub-S corporations as highlighted by Ms. Stone's case.

b. Mr. Bob Monday, President, Parents and Children Equality (PACE) reported some courts are still dividing college costs one-third to each parent and one-third to the child. They are not taking into account the income or resources of each party.

c. Judge Donahue reported the abatement of support during parenting time under the new guidelines, forms for use by courts for Title IV-D support purposes and other issues may be discussed together as recommended changes in the guidelines. The committee discussed hosting a session at the September conference to explore new and/or developing areas in child support.

9. Parenting time guidelines – implementation.

a. Judge Donahue reported a call from a judge who discussed distribution of parenting time guidelines to persons filing for divorce in his county. How can they be referred to without attaching a copy to each order? Judge Aylsworth showed a copy of the guidelines printed on 8 pages double-sided. The committee members discussed requiring the local clerk to give a copy of the parenting time guideline to the parties at filing and/or pro se litigants only at filing, having the Judicial Center or some other organization print copies for use throughout the state, requiring attorneys provide a copy to their client and the other litigant if not represented, and/or requiring the dissolution decree indicating each party has received a copy of the guidelines and noting any deviations in the decree.

b. Mr. Bercovitz agreed to explore with the Indiana State Bar Association and/or the Attorney General the printing of parenting time guidelines in bulk for purchase at little or no cost.

9. Next meeting dates. The members of the committee agreed to meet again from 10:30 a.m. - 4:00 p.m. at the Indiana Judicial Center on Friday, February 16, March 16, April 20, May 18, July 20, August 17, September 12, and October 19, 2001, all from 10:30 a.m. - 4:00 p.m. at the Indiana Judicial Center except Sept. 12, which would be on Wednesday from 10:00 - 12:00 Noon in conjunction with the Judicial Conference.

Respectfully submitted,

Jeffrey Bercovitz, Director  
Juvenile and Family Law